



Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

**In response to the Issues Paper: The experience of
First Nations People with Disability in Australia**



4 November 2020

About Health Justice Australia

Health Justice Australia is a national charity and centre of excellence supporting the effectiveness and expansion of health justice partnerships through:

- Knowledge and its translation: developing evidence and translating that evidence into knowledge that is valued by practitioners, researchers, policy-makers and funders.
- Building capability: supporting practitioners to work collaboratively, including through brokering, mentoring and facilitating partnerships.
- Driving systems change: connecting the experience of people coming through health justice partnerships, and their practitioners, with opportunities for lasting systems change through reforms to policy settings, service design and funding.

Our work supports effective collaboration between health, legal and other services to achieve better health and justice outcomes for individuals and communities made vulnerable by the systemic drivers of health inequity and injustice; and by the barriers to accessing the services designed to support them. Health Justice Australia recognises that social and environmental factors (including legal issues) will also affect those who do not access any services and that community-wide impact is likely to require more than individual assistance. Additional strategies may include service system redesign, and advocacy for policy change around factors which impact upon the social determinants of health.

By integrating legal services into health settings, we can improve access to justice, address the social determinants of health and increase wellbeing.

Our commitment to Aboriginal and Torres Strait Islander people

Health Justice Australia recognises that colonisation in Australia has led to chronic and persistent poor health and lack of justice in the lives of Aboriginal and Torres Strait Islander people; problems that health and legal service systems have repeatedly failed to address. We also recognise that we are part of the system that needs to change and understand that how we advance the priority of health and justice among Aboriginal and Torres Strait Islander communities is as important as the priority itself. Health Justice Australia is committed to supporting self-determination among Aboriginal and Torres Strait Islander people and this commitment is reflected in our Board-level endorsement of the Uluru Statement from the Heart, and in our strategic plan.

As a non-Indigenous organisation, our ability to support self-determination will be reflected in how well we work with Aboriginal and Torres Strait Islander communities to improve their own health and justice outcomes. Our work includes supporting Aboriginal and Torres Strait Islander leadership in knowledge and practice across the health justice landscape; elevating the voices of Aboriginal and Torres Strait Islander people in Health Justice Australia's policy advocacy for systems change; and building the cultural capability of Health Justice Australia to support Aboriginal and Torres Strait Islander leadership through valued, trusted partnership. To this end, we work through established relationships with Aboriginal and Torres Strait Islander community controlled organisations that are working in health justice partnership; and with Aboriginal and Torres Strait Islander peak bodies in health and legal services.

Health Justice Australia's role in developing this submission

Staff from the Office of the Solicitor Assisting the Royal Commission approached Health Justice Australia to build upon the information about health justice partnership that they have received to date. We were asked to focus on health and justice issues that affect Aboriginal and Torres Strait Islander people with disability, particularly in relation to the child protection system; and to give examples of how they intersect, lead to and entrench disadvantage among this cohort. We were also asked to describe how health justice partnership is an effective model for change.

The content for Health Justice Australia's submissions is informed by the insights gained from our close relationships with health, legal and other practitioners working in and across relevant service systems. To inform this submission, we worked with colleagues from Aboriginal and Torres Strait Islander-led health justice partnerships and their peak bodies.¹ Health Justice Australia does not speak on behalf of Aboriginal and Torres Strait Islander parents and children with disability who interact with the child protection systems, therefore it is not appropriate for us to supply stories or case studies about first-hand experiences. If considered appropriate by the communities they serve, these will be included in submissions that come directly from Aboriginal-led community controlled health and legal organisations.

¹ We acknowledge Danila Dilba Health Service Health Justice Partnership; National Aboriginal Community Controlled Health Organisations; Queensland Indigenous Family Violence Legal Service; LawRight Wuchopperen Legal Clinic. These organisations are members of a much larger network who inform our work.

The submission

People experience multiple, intersecting problems in their lives that services operating from a single vantage point are poorly equipped to address

Since the World Health Organization's ground-breaking Commission on Social Determinants of Health (2008), the evidence has continued to grow about how social and environmental factors can make or keep people unwell. Meanwhile, in 2012 the landmark Legal Australia-Wide (LAW) survey took an in-depth look at the nature of legal problems, the pathways to resolving them and the demographic groups that struggle with the weight of their legal problems in Australia.² It established that more than one-fifth of people in Australia experience three or more legal problems in a given year; and that vulnerability to legal need increases with deepening disadvantage. These legal issues may occur in clusters and many legal issues lead to illness. People often seek no advice for these problems but, when they do, they are less likely to seek help from a lawyer than another advisor such as a health professional. Together, the social determinants of health and access to justice literature point to groups of people with intersecting health and legal issues who access health services with symptoms, but who do not seek out legal solutions.

Of relevance to this stage of the Royal Commission, the Legal Australia-Wide (LAW) survey indicated that Aboriginal and Torres Strait Islander people have an increased prevalence of *multiple* legal problems, as well as increased prevalence of government, health and rights problems.

This evidence base drives our interest in how the social determinants of health effect people's

experience of legal need and justice and the role that legal help can play in tackling some of these problems. Critically, it shapes our recognition that any lasting solution to these problems needs to move beyond individual solutions to incorporate structural change. This is particularly important when it comes to the child protection system and its intersection with other human service systems, including disability services, all of which operate from a single vantage point and are poorly equipped to address the multiple, intersecting problems in the lives of Aboriginal and Torres Strait Islander people with disability.

There are many structural factors that make it difficult for the health, justice and other systems to work more effectively together. While commonly touching the lives of the same people and communities, health and human (including legal) services have their own ministers, budgets and policy priorities. Each system has policies and processes, technology and even language that entrench ways of working within their field. These often differ significantly between fields (such as between health and justice) causing a 'silo' effect which makes it difficult to move between the silos and to work effectively on shared agendas. In addition, services and the practitioners within them tend to specialise in their approach which can lead to barriers being placed in the way of addressing the intersecting factors that reduce people's health and wellbeing and drive their experience of disadvantage.

Participants emphasised that multiple, intersecting problems that result from discrimination are a feature of the experience of disadvantage in the lives of Aboriginal and Torres Strait Islander people with disability. This is also reflected by First Peoples Disability Network Australia who draw attention to the lack of understanding of the nature of intersectional discrimination. They highlight that First Peoples

² Coumarelos C, Macourt D, People J, McDonald HM, Wei Z, Iriana R and Ramsey S (2012) Legal Australia-Wide Survey:

Legal Need in Australia, Law and Justice Foundation of New South Wales.

with disability have to traverse the worlds of Indigenous justice and disability justice at the same time, however governments still remain largely perplexed by how to address the intersectional nature of discrimination against First Peoples with disability.³

Health justice partnership provides one way to manage the effects of this intersectionality, as demonstrated by the evaluation of the LawRight-Wuchopperen health justice partnership.

Situating Indigenous-focused legal service delivery within an ACCHO is both symbolically significant and more likely to deliver positive Aboriginal and Torres Strait Islander justice outcomes. ACCHOs reinforce principles of self determination and strengthen culture, key to improving access to justice for Indigenous people.⁴

Service systems that respond to health, legal and social problems in people's lives can also drive or compound the experience of disadvantage

The Aboriginal and Torres Strait community controlled organisations that we consulted for this submission agreed that the child protection system does not support health or wellbeing among Aboriginal and Torres Strait Islander families. On the contrary, they identified ways that the system itself can drive disadvantage in people's lives; and that this is compounded for people living with disability.

The process by which child protection authorities collect evidence in an investigation or when taking action is one clear example. Written statements (affidavits) that can reach hundreds of pages are developed using reports from police,

schools and a range of other services with whom a family has been in contact. In addition to reports being lengthy and complicated, they can be highly critical of the conduct of the families they have seen as clients. This process breaks people's trust in the services that exist to support family health and wellbeing, leading people to disengage from them in any continuing or future interaction. This exacerbates the challenge in supporting families to access their rights and entitlements, for instance in encouraging families to challenge practice or process that is out of line with policy or law.

These problems are further compounded for families who need support for children with complex forms of impairment and neurodevelopmental delay, for example as a result of fetal alcohol spectrum disorders. The lack of accessible and adequate assessment processes to identify or diagnose disability is a critical systemic failing in this respect. Instead of being able to identify where disability may be present in someone's life and how best to provide support to that person, the manifestations of that disability are often identified in terms of problematic behaviour by the individual. Practitioners we consulted for this submission described a pattern they observe, whereby children with complex problems related to disability first come to the attention of the child protection system, then become caught up in the juvenile justice system and ultimately ensnared by the (adult) criminal justice system. At each of these stages, existing health, legal and social services are often poorly positioned to identify and respond to someone's needs, even as these are processes that could lead to further understanding about a condition that underpins someone's experience of disability and what levels of support that person might need.

³ First Peoples Disability Network Australia, Opening Statement the Senate Inquiry into Australian Government response to the Covid-19 pandemic, July 23, 2020.

⁴ Allison, F (2019) Evaluation of the LawRight Wuchopperen Health Justice Partnership and Law Yarn.

Additional challenges facing regional and remote communities were also identified, where court orders are made that are often inappropriate or impossible to uphold in the context of living in a remote community.

Mandatory reporting is a further example of systems driving and compounding the experience of disadvantage. In the Northern Territory in particular, where mandatory reporting requirements are extremely stringent, there are concerns that child protection intervention is being driven in response to poverty, rather than neglect. This problem is exacerbated by the lack of wrap-around services that would provide an alternative and supporting approach to the health and wellbeing of children and their families.

Participants also identified that, within the child protection system, there is a clear lack of understanding of cultural context and of Aboriginal and Torres Strait Islander styles of parenting; and that a key factor in this is institutional racism. They noted that many of the staff employed within the child protection system are poorly equipped to appreciate the strength of culture and identity of the families they are there to serve. This further entrenches discriminatory practices within the administration of the child protection system.

Participants pointed to the impacts of institutional racism in the allocation of resources across service systems that interact with child protection. For example, health services are funded for individual episodes of care that contain particular assessments or processes within a set timeframe. However, for many people living in remote communities, a person might only come into town every few months, which then provides a single opportunity to address a whole range of issues, across multiple services. While this pattern is highly predictable, funding models do not allow services to respond appropriately. For instance, the emergence of funding for social and emotional wellbeing

services within Aboriginal and Torres Strait Islander community controlled health services was intended to allow a more holistic response to people's needs; but this capacity has been eroded since Federal budget cuts in 2014.

Those we consulted for this submission indicated that all the Aboriginal and Torres Strait Islander families affected by disability with whom they have worked have experienced institutionalised racism.

They also spoke of Aboriginal and Torres Strait Islander people's lack of trust as a legacy of processes that have promised solutions but not delivered them. For example, there was significant input from community about the experiences of Aboriginal and Torres Strait Islander children with disability given to the Royal Commission into the Protection and Detention of Children in the Northern Territory (2016) but this has resulted in little positive change. Participants suggested that the lack of interest, or participation, by Aboriginal and Torres Strait Islander people with disability in the present Royal Commission reflects this lack of trust. As practitioners in our network put it:

The strong relationships in community are what it takes for community to take the risk and tell their own stories again.

LawRight Wuchopperen health justice partnership, Cairns, Queensland

Health justice partnership is demonstrating how services can work differently with and in response to the needs of Aboriginal and Torres Strait Islander people living with disability who are caught up in the child protection system

As the national centre of excellence in health justice partnership, Health Justice Australia supports health and legal services to work together to respond to the multiple, intersecting health and legal problems in people's lives that drive or exacerbate their experience of disadvantage. Health justice partnership offers a more holistic approach to care for people who are at risk of falling through the gaps of existing service infrastructure.⁵

Health justice partnerships embed legal help into health care services and teams to improve health and wellbeing:

- for individuals, through legal assistance in healthcare teams and settings that they access
- for people and communities vulnerable to complex need, by integrating service responses and redesigning service systems around client needs and capability
- for vulnerable populations through advocacy for systemic change to policies which affect the social determinants of health.

Health justice partnerships provide legal support across a wide range of needs, such as:

- assisting people with family law, civil law and care and protection issues;
- advocating for public housing tenants needing repairs to address untreated mould, or having handrails and other aids installed to continue living independently in their own homes;
- assisting people with accumulated fines or debt that cause stress or act as a barrier to meeting health costs like filling prescriptions; and
- advising on wills, powers of attorney and custody – the legal needs that can present at the most unexpected times, like following a diagnosis of serious illness.

In 2018, our census of the health justice landscape showed that there are 73 health and legal services working together in partnership across Australia. They are located in health services and settings that support populations who are particularly at risk of poor health and justice outcomes. The survey indicated that legal services, including an Aboriginal and Torres Strait Islander legal service, have partnered with 14 Aboriginal community controlled health organisations across the health justice landscape.⁶

A core element of this solution is the existing relationships of trust and collaboration that ensure person-centred care and support for the cultural context of the people contacting these

⁵ See Bachrach, D, H Pfister, K Wallis, and M Lipson (2014) 'Addressing Patients' Social Needs: An emerging business case for provider investment', The Commonwealth Fund, United States of America; See also: Beeson, T, BD McAllister, and M Regenstein (2013) 'Making the Case for Medical-Legal Partnerships: A Review of the Evidence,' School of Public Health and Health Services, Washington DC; See also: Williamson, A, J Trott, and M Regenstein (2018) 'Health

Center-Based Medical-Legal Partnerships: Where they are, how they work, and how they are funded,' Milken School for Public Health, George Washington University, Washington DC.

⁶ Forell, S, and Nagy, M (2019) Joining the dots: 2018 census of the Australian health justice landscape, Health Justice Australia, Sydney.

services. Health justice partnership highlights the value of wrapping services around people's complex needs, particularly people who are unlikely to come into contact with other services, while they are accessing a trusted Aboriginal community controlled service. Having key staff on-site when a client is available also increases the number of 'opportunistic' referrals that meet a client's needs at a point in time and in a place where they feel safe and comfortable to seek help. It also enables legal practitioners to offer a secondary consultation that provides support and information to healthcare workers, who are often the frontline in identifying a range of legal or social concerns among their patients.

An example of how this works in practice with Aboriginal and Torres Strait Islander people with disability was described by a practitioner in an Aboriginal and Torres Strait Islander community controlled health justice partnership.

We could see that the in-take process, on both the health and the justice sides, was not identifying disability needs. Previously, when a child notification came through LawRight Wuchopperen, it triggered a whole sequence of events but not necessarily a full neurological assessment of someone. Now, when the child protection services contact Wuchopperen Health Service for medical records, the legal clinic is automatically notified so that they can move quickly to support families whom may be petrified by the power of child safety or don't understand their rights and the concept of consent. With early legal assistance, some of the inappropriate requests being made by child protection services can be challenged, for example when child protection is seeking historical information that is not legally warranted. Working in health justice partnership has also increased referral pathways with the referrals often being more

effective because other practitioners are engaged. For example, if an individual or family with disability is responding with anger and violence to an interaction with the child protection system, easy access to a psychologist or counsellor at the health service can result in a more positive outcome for the family.

(LawRight Wuchopperen health justice partnership, Cairns, Queensland).

This health justice partnership has recently commenced a youth program to ensure full assessment of potential conditions or disabilities among children. This is an effort to prevent children becoming caught up in the child protection or criminal justice systems; and to ensure that they have access to NDIA packages or other supports they need and are entitled to.

An evaluation of the LawRight Wuchopperen health justice partnership highlighted the value of this model when delivered within an Aboriginal and Torres Strait Islander context. When identifying the key factors that resulted in their particular needs being met through the health justice partnership, clients spoke of the importance of having a First Nations lawyer to talk with, being able to access legal help in an Aboriginal community controlled organisation and having their cultural needs met.⁷

Another example of the effectiveness of the model is at Danila Dilba Health Service which is in a health justice partnership with NT Legal Aid.

Through the partnership we work collaboratively, facilitating greater understanding of the relationship between health and justice across our services. Our clinics and social emotional wellbeing teams have existing relationships of trust with clients which we can build on to help them overcome barriers to accessing legal assistance. We have

⁷ Allison, F (2019) Evaluation of the LawRight Wuchopperen Health Justice Partnership and Law Yarn.

seen how positive outcomes can be achieved where our teams work together to help vulnerable clients navigate complex systems like the NDIS and child protection system’.

(Danila Dilba Health Service, Darwin, Northern Territory)

These insights speak to the many ways that health justice partnership can support improved health and justice outcomes beyond the single vantage point or siloed approaches that services often follow when working on their own. Models like health justice partnership provide a pathway for service systems to change how they respond to the multiple and intersecting needs of the people they are here to help. In just a few years, health justice partnerships that are supporting Aboriginal and Torres Strait Islander people to avoid, or manage their interactions with, the child protection system have demonstrated that there is potential for reducing removals of children from their families and improving health and wellbeing. We commend this approach to the Royal Commission.



P+61 02 8599 2183

Ehealthjustice@healthjustice.org.au

Wwww.healthjustice.org.au

Health Justice Australia is a charity registered with the Australian Charities and Not-for-profits Commission. Health Justice Australia is endorsed as a public benevolent institution and has deductible gift recipient status (generally, donations of \$2 or more are tax deductible, depending on your taxation circumstances).

Health Justice Australia ABN 55 613 990 186